IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1233 OF 1989

Karnataka Bank Ltd. ..Plaintiffs.

V/s.

M/s.Nikhil Corpn. & Ors. ..Defendants.

Mr.Roshan D'souza i/b. Umesh Shetty & Co. for Plaintiffs.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 27, 2007.

P.C. :

1. None appears for the Defendants though served. No written statement has been filed on behalf of the Defendants. The Plaintiffs on the other hand, have filed affidavit of Mr.S.M.Bendre, authorised officer of the Plaintiffs, reiterating the case made out in the plaint. Besides, the Plaintiffs have filed original documents in support of their claim. In the circumstances, I am disposed of to exercise the powers under Order 8 Rule 10 of C.P.Code and proceed further in the matter.

2. In substance, the case made out by the Plaintiffs is that the Defendant No.1 is a partnership firm. Defendant No.2 to 4 are the partners of the said firm. Defendant No.5 agreed to

stand and stood as guarantor/co-obligant for the repayment of the amount due and payable by the Defendant Nos. 1 to 4 to the Plaintiff. The Plaintiffs had offered shipping loan financial facility to the Defendant No.1 to the extent of Rs.2.5 lakhs, as sanctioned by the appropriate authority. The Defendant No.1 availed of the said facility from time to time as per the books of account maintained by the Plaintiffs as on 31st March, 1989. The Defendant No.1 was liable to pay sum of Rs.1,67,414.65. This position is reflected at the foot of the accounts of the books of accounts maintained by the Plaintiffs in the ordinary course. Inspite of repeated reminders, the Defendants, in particular, Defendant No.1 failed to repay the outstanding amount. As a result, the Plaintiffs have filed present Suit on 10th April, 1989 praying for the following relief.

> "(a) that the Defendants No.1 to 5 be jointly and severally ordered and decreed to pay to the plaintiffs a sum of Rs.1,67,414.65 as per the particulars of plaintiffs claim being Exhibit "C" hereto with further interest on Rs.1,66,655.40 at the rate of 18.50% p.a. with quarterly rests from the date of filing of the suit till payment and/or realisation.
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> (b) for the costs of the suit."

3. The present suit was filed as Summary Suit in this Court. By order dated 9th October, 1989, this Court granted conditional leave to the Defendants while disposing of Summons for Judgment No.371 of 1989. As per the said order the Defendant No.1 has deposited sum of Rs.15,000/- within the specified time. However, so far the Defendants have not filed Written Statement inspite of sufficient opportunity given to them under order dated 9th October, 1989. When the matter is called out today, none appears for the Defendants.

4. As mentioned earlier, the Plaintiffs have filed affidavit of evidence in lieu of examination in chief sworn by Shri S.M.Bendre, authorised officer of the Plaintiffs. The affidavit reiterates the case made out in the plaint. Besides the affidavit, the witness has offered himself for cross examination on oath. However, as none appears for the Defendants, there is no question of cross-examination of the witness. As a consequence, recording of Plaintiffs' witness is treated as closed.

5. Having perused the affidavit accompanied by the compilation of original documents, which contains original Demand Promissory Note duly signed by the

Defendant, Original Take Delivery letter dated 12th April, 1986 which is also signed by the Defendants, Letter of repayment of the same date, Export Credit Agreement of the same date, Balance Confirmation letter dated 1st July, 1986 and Original Balance Confirmation letter dated 30th September, 1986. It is evident that the Defendants remained in arrears, as is asserted by the Plaintiffs. The Plaintiffs are also relying on the letter written by the Defendant No.1 dated 14th July, 1987, which acknowledges the liability to pay the amount towards financial assistance availed by the Defendants. Reliance is also placed on the letter addressed by the Plaintiffs to the Defendants dated 20th February, 1988 regarding submission of monthly Stock Statement, as also letter dated 25th February, 1988 regarding repayment of Overdue liabilities. The Plaintiffs are also relying on the letter sent by the Defendant No.5 to the Plaintiffs for intimation of the outstanding dated 8th March, 1988 and lastly legal notice dated 5th April, 1988 sent to the Defendants. The Plaintiffs are also relying on the copies of the plaint and Written Statement in Suit No.2409 of 1998, which has been instituted by the Defendant No.5.

6. From the affidavit of evidence and documents,

as relied by the Plaintiffs, the Plaintiffs have made out sufficient case, as asserted in the plaint that financial assistance was given to the Defendant No.1, besides, the Defendant No.2 to 4 were the partners of the Defendant No.1 and Defendant No.5 stood guarantor/co-obligant alongwith the Defendant Nos. 1 to 4 and agreed for repayment of the outstanding dues. Material on record also establishes that the Defendants in particular, Defendant No.1 was in arrears to the extent of Rs.1,67,414.65 as on 1st April, 1989. The material on record thus establishes that the principal amount due and payable to the Plaintiffs on the date of filing of the Suit was to the extent of Rs.1,67,414.65.

7. The next question is whether the Defendants are liable to pay 18.50% p.a. towards interest on the outstanding principal amount. From the documents on record it is seen that agreed rate of interest is stated to be 12% p.a.. The Plaintiffs have not produced material to show that they were entitled for further interest beyond 12% p.a. Accordingly, the Plaintiffs would be entitled to recover the principal amount alongwith the interest @ 12% p.a. until realisation of the suit amount which was the agreed rate of interest.

8. Taking overall view of the matter in exercise of power under Order 8 Rule 10 of CPC, I proceed to decree the Suit in the following terms.

(i) The Defendant Nos.1 to 5 are jointly and severally ordered and decreed to pay to the Plaintiffs sum of Rs.1,67,414.65 alongwith interest @ 12% p.a. thereon with quarterly rests from the date of filing of the suit till payment and /or realisation. The Defendant No.1 will be entitled for adjustment of Rs.15,000/- which amount has been deposited in this Court in terms of the Order dated 9th October, 1989. Besides, the Defendants will be liable to pay interest at the rate of 12% per annum on the balance principal amount on or from the said amount of Rs.15,000/- has been deposited by the Defendant No.1 in this Court. The Suit is decreed on the above terms, with costs.

(ii) Decree be drawn on the above terms.

(A.M.KHANWILKAR,J)